IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10027 OF 2004

Shri.Rajaram Ramkrishna Yadav
& anr. ..Petitioners.

Vs.

Shri.Mahadeo Daji Yadav ..Respondent.

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Mr.Dilip Bodake for the Petitioners.

Mr.S.R.Page for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

15th April, 2005.

P.C. :

Rule, made returnable forthwith by consent. Counsel appearing for the Respondent waives service. By consent taken up for hearing and final disposal.

Prima facie, cognisant as this Court is of the limitation on the exercise of the writ jurisdiction under Article 227, I am of the view that the interim order of the District Judge, Karad

is required to be interfered with during the pendency of the Petition. The admitted fact is that on the strength of an agreement to sell dated 22nd October, 1973, the Respondent instituted a suit for specific performance, during the pendency of which an order of status quo continued to operate. The suit was dismissed in default on 14th October, 1997. Thereafter a suit for the grant of an injunction simpliciter was instituted by the Respondent on 20th December, 1997. On 20th February, 1998 the Respondent executed a registered deed of cancellation, relinquishing all rights, title and interest under and in pursuance of the agreement to sell and recording that possession had been handed over to the Petitioners. No proceedings have been taken out for setting aside the deed of cancellation or in support of the plea that the deed was obtained by fraud, coercion or duress. At the interim stage, the Additional District Judge was, in my view, in error in declining to give full effect to a registered document. In these circumstances, I had indicated to counsel during the course of hearing that the order of the Additional District Judge is required to be interfered with.

At this stage, learned counsel for the Respondent fairly states that without the Court expressing any final opinion on merits, even for the purpose of deciding upon the question of interim relief, the impugned order of the Additional District Judge dated 8th October, 2004 may quashed and set aside. By an ad interim order dated 21st December, 2004, a learned Single Judge had directed that the order of status quo which was granted by the District Judge on 16th October, 2004 shall remain operative until this Petition was taken up for further hearing. The interim order dated 21st December, 2004 of the Learned Single Judge in these proceedings shall continue to operate pending disposal of the suit. However, it is clarified that the Learned Trial Judge shall dispose of the suit uninfluenced either by the observations contained in this order or in the orders passed by the Courts below which are confined to the disposal of the application for interim relief. In these circumstances, in view of the submission made on behalf of the Respondent, the impugned order is quashed and set aside.

The Petition is disposed of in the aforesaid terms.